



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

## CONSTITUTION MAKING IN CHINA

*By Payson J. Treat, Ph.D., Associate Professor of History,  
Leland Stanford University*

For the past ten years China has been one of the most interesting portions of the globe. In fact it would not be an untenable position to maintain that China, during that period, has been the most progressive of nations. Not in the sense that she has outdistanced the others, but that she has made greater strides away from her condition of a decade ago. The nature of these changes and reforms has been indicated from time to time in the press. Any one of the great measures would be in itself notable and almost unbelievable to a person who only knew the China of a generation past. All of them combined make a program which should arouse the wonder and admiration of all sympathetic observers.

The new China was born in the agony of the Boxer madness of 1900. Some would trace its origins to the new ideas introduced by the missionaries and the handful of Chinese who had studied abroad. But it appears unquestionable that no sweeping changes could have been made without the support of the Empress Dowager, and it was not the hurried reforms of 1898 but the humiliation of the defeat and flight in 1900 which caused her remarkable *volte face*. Before the return of the court from exile she had contritely acknowledged the inability of the old system to meet the demands of the new conditions. Her decree of January 28, 1901, although issued in the Emperor's name, was a most remarkable document and it is undoubtedly true that "no other ruler of the dynasty could have proclaimed such drastic changes without causing serious dissensions and possibly civil war." Frankly she told her people she had decided "that we should correct our shortcomings by adopting the

best methods and systems which obtain in foreign countries, basing our future conduct upon a wise recognition of past errors." And with her tremendous influence and masculine energy behind the new forces, success seemed assured.

Slowly, in comparison with its later speed, the reform movement developed. There was a great program summed up in that single sentence. It meant sweeping changes in education, a new army and navy, a reformed currency, uniform weights and measures, codification of law and procedure, reorganization of the local administration and of the relation between the central and the provincial governments, and other correlated reforms. In one particular she went beyond the foreigners for she opened a campaign against opium in spite of vested interests. The least of these undertakings would be no small matter under the conditions which prevailed in China.

The domestic situation was hardly favorable. Granting all the desirable characteristics of the Chinese people there were many disturbing factors. The enormous area of the country, the differences in customs and manners and speech, the grinding poverty of the masses, the ignorance, the conservatism, the official corruption, and the increasing antipathy of the Chinese for the Manchu. And within nine years after the first edict the strong hand of the Empress Dowager was removed by death.

Nor could China devote all her attention to setting her house in order. Foreign complications distracted the attention of her statesmen. First came the Russian peril, followed by the great Russo-Japanese war fought on Chinese soil. The success of Japan gave the reform movement a great impetus and after 1905 it swept on with little successful opposition. Then the Manchurian question became again pressing, with Japan in Russia's disquieting position. Boundary questions in every quarter, negotiations regarding foreign loans and concessions, and a new Russian peril in Mongolia, interfered with the consideration of domestic affairs of the highest importance. And yet these foreign menaces were not an unmixed evil. Just as the establishment of foreign naval stations on the gulf of Chihli in 1897

and 1898 gave fuel to the Boxer flames, so the fear of Japan and Russia in Manchuria, and of the possible dangers from the foreign loans, aroused a genuine patriotism throughout the empire and strengthened the argument for popular participation in the government.

Bearing in mind the conditions, domestic and foreign, during the past ten years, it is difficult to see how anyone can be pessimistic about the progress of the reforms in China. Not that so little has been done, but that so much has been accomplished should be the feeling of the foreign observer. A nation which can sweep aside a venerated system of education and of civil service and which can wage, with such unexpected success, a battle against opium, certainly deserves the benefit of any doubt. Yet it is well to be on one's guard not to expect too much in too short a time. Four hundred million people cannot be made over in a day or in a generation. "Direction and not distance" is the vital test, and that China is moving in the right direction seems self evident.

Typical of the new forces, looming large in the minds of the progressive Chinese, and yet not, perhaps, first in importance, is the movement for a constitution and representative government. A "parliament for China" would have sounded unreal enough a few years ago, and yet in a little over a year the inaugural session will take place. A long period of preparation for such an important step might well be considered necessary, but the government has moved, perhaps against its better judgment, with unexpected celerity. Less than seven years will have elapsed between the pledge of a constitution and the summoning of a national assembly.

The example of Japan was, naturally, constantly before the Chinese officials. As the first Oriental country to adopt a western form of government, and apparently with the most satisfactory results, her career might afford a safe guide for China. Just as Japan was enabled to pick and choose the best features of western civilization, so was it possible for China to take advantage of all that Japan had learned. In Japan constitutional government was the free grant of

the throne after a long period of national preparation. The unerring wisdom of the advisers of the Emperor, during this trying period, account largely for the success which has been attained. In 1868 the Emperor took the famous Charter Oath which pledged the summoning of "an assembly widely convoked." The next year the Kogisho, a consultative body representing the daimios solely, held a session. In 1874 the first assembly of prefectural governors was held, and the next year the Genro-in, or Senate, composed of official nominees, was formed. Beginning in 1873 the liberal leaders agitated for a constitution and representative institutions and served to prepare the people for the wished-for change. The first representative assemblies were those in the prefectures and cities which met in 1879, and in 1881 the Emperor announced that a constitution would be granted within ten years. These years were marked by careful preparations. The late Prince Ito was entrusted, in 1882, with the duty of working out the draft of a constitution. A new peerage law was promulgated in 1884, the Cabinet was reorganized in 1885, and the Privy Council established in 1888. Finally, in 1889, the constitution was promulgated, and the next year the first Diet was opened. This briefest of outlines serves to indicate that in the case of Japan fully twenty years were devoted to making ready for the new political institutions. And this length of time was a compromise between the liberal and conservative leaders. In China less than one-third of the period has been allowed. It is possible to advance arguments in favor of shortening the time in the case of China, and on the other hand it is perhaps easier to believe that conditions there are less favorable than they were in Japan. In any event an opinion at this stage could be of little value, and a prophecy, in the light of recent developments, of no value at all. Instead, a brief survey of what has been accomplished during the past five years may be of interest.

The definite movement toward a constitution began in December 1905, when a commission was sent abroad to study the workings of constitutional governments. On their return a palace council was held to consider their reports,

and in spite of the opposition of some of the conservative Manchus, a decision in favor of a grant of a constitution was made. This was approved by the Empress Dowager and on September 1, 1906, an edict was issued in the name of the Emperor. The reasons advanced for this remarkable change are striking: "We sent our High Ministers to various countries to study and investigate their governmental systems and administrative methods. Now, these Ministers have returned, and in their report all submitted their opinion, as the result of their study and investigation, that the weakness and inefficiency of our country is due to the lack of close touch between the government and the people and the entire separation of those who are in office and those who are not. The officials do not know how to protect the people, and the people how to defend the country. That other countries are wealthy and strong is primarily due to the adoption of a constitution, by which all the people are united in one body and in constant communication, sane and sound opinions are extensively sought after and adopted, powers are well divided and defined, and financial matters and legislation are discussed and decided upon by the people. Moreover, other countries look to one another for improvement, and amend their constitutions and change their laws to their highest efficiency. So it is not a mere accident that their governments are in such a good working order and their peoples enjoy so great happiness." But the Empress Dowager understood what a constitution implied. "At present no definite plan has been decided upon and the people are not educated enough for a constitution; if we adopt one hastily and regardless of the circumstances, it will be nothing more than a paper constitution. Then how can we stand before the people and ask them to repose confidence in us?" So she outlined the necessary steps which must precede constitutional government. Corruption must be done away with, the administration must be reformed, codes of law drawn up, universal education established, reforms introduced in the finances, the army, and the police, and the people must be taught to understand politics and be prepared to participate in the government. No date was set for the

final adoption of the constitution, but all classes of people were urged "to acquire the qualifications of a subject under a constitutional government."

This was a decision of the first importance. It was generally recognized that the Empress Dowager was thoroughly in sympathy with the movement, and her active supporters were the great Viceroy Yuan Shih-k'ai and the travelling commissioners Tsai Tsz and Tuan Fang. The Japanese press, which was most interested in the developments, was generally favorable as to their success, although in all quarters some pessimistic opinions were advanced and the motives of the Empress Dowager scrutinized. A committee on reforming the administration was appointed, and projects of many kinds were discussed. The question of the division of authority between the central and the local governments was one of the troublesome problems, especially the centralization of the control of the purse and the sword which was vested in the provincial authorities. Typical of the earnestness of the throne, however, was the famous anti-opium edict of September 20 which, better than any other measure of the past five years, has shown, in its enforcement, how gravely well-informed foreigners can underestimate the strength of popular sentiment in China. In November the ministries were reorganized, and with the exception of the Board of Foreign Affairs no distinction was made between Manchus and Chinese.

Throughout the early part of 1906 the air was full of rumors that a conservative reaction had set in. The venerable Chang Chih-tung evinced doubts as to the readiness of the people for so great responsibility, but Yuan Shih-k'ai held his ground. It was he who gave the first test of the representative idea by organizing a municipal government in Tientsin in the summer of that year. The suffrage was based on education and property, the election was indirect, and a rather high qualification for membership was established. The election was held on June 15, the convention on July 24, and the council convened on August 18. Any strength that the conservative leaders might have gained was lost through certain diplomatic developments. The

abdication of the Emperor of Korea and the imminent annexation of that country by Japan, the Franco-Japanese entente, and the expected Russo-Japanese entente, all strengthened the arguments of those who felt that in reform alone lay China's safety. Yuan Shih-k'ai made the most of the situation and again was dominant in government circles. With Chang Chih-tung he was made a member of the Grand Council, and largely on his advice another commission was sent abroad, this time to visit constitutional monarchies only, Japan, Great Britain, and Germany. On September 21 a new advisory council was provided for, which became the Senate.

The next step was the formation of local assemblies. The edict of October 19 commanded the viceroys and governors to establish them, but no details were given. These were supplied on July 8, 1908, having been prepared by the Department of Constitutional Investigation, and one year was given for their establishment.

In the meanwhile the question of a national assembly was frequently under discussion, and in June it is said that eleven of the commissioners voted for calling it in ten years, three favored seven years, and seven favored five years. Those who urged celerity were educated in Japan, while those who urged deliberation were trained in the West. During the summer delegations began to arrive in the capital from various parts of the empire urging the speedy convocation of a national assembly, and their petitions were answered by the edict of August 27 which fixed nine years hence as the time when a constitution would be promulgated and a parliament summoned. The steps in preparation were again outlined in more detail than in 1906. A definite date was now fixed, but this did not satisfy the agitators.

The death of the Emperor and the Empress Dowager on November 14 and 15 was believed by some to presage a reactionary movement, but on December 3 the infant Emperor issued a decree confirming the plans of the late Emperor, and although the Regent, Prince Ch'un, soon dismissed Yuan Shih-k'ai from office his work was not discredited.

The elections for the provincial assemblies began in May, 1909, and on October 14 they were opened by the respective viceroys and governors. Twenty-two assemblies were convened, the membership varying from 30 to 140. Although they were designed to be deliberative bodies they soon showed unexpected signs of independence. The conduct of the provincial officials was at times severely criticized. Government measures were frequently rejected, notably the proposed stamp-tax, and especial opposition was directed against the foreign loan policy of the government. The assemblies also took the lead in petitioning for the speedy convocation of a national assembly, in spite of the nine years program of preparation. A committee representing the assemblies hastened to the capital, but on February 1, 1910, an edict rejected their proposal and announced the Emperor's adherence to the original date. The delegates reluctantly left Peking, but the vernacular press took up the agitation. Again foreign complications urged on the advocates of a parliament. In Hunan and Szechuan popular feeling was aroused against the so-called Four Power loan, and on every frontier boundary-questions were pressing. In June, delegates from twenty-two provinces with representatives of various associations, delegates from residents abroad, and others, assembled in Peking to urge a speedy assembling of the parliament which would lend strength to the empire in its hour of need. Once again, however, after a Palace Council, the petition was rejected on the 27th. But this effort resulted in a permanent organization in Peking to agitate for the desired ends and to secure common action on the part of the provincial assemblies. The annexation of Korea by Japan, on August 22, produced a profound impression upon thoughtful Chinese.

On October 3, the Tzu Cheng Yuan, commonly known as the Senate and really the foundation of the future parliament, was convened in Peking. It had been organized under the edicts of September 20, 1907, and July 8, 1908, and the details of organization were announced on August 23, 1909. The membership consisted of 100 official appointees and 100 nominees of the provincial assemblies. The

President (Prince Pu Lun) and Vice-President were appointed by the throne. The official nominees consisted of members of the royal family, the various imperial clans, the Chinese and Manchu nobility, the hereditary princes of the tributary provinces, and officials, literati, and men of wealth. At the opening session 37 Manchus, 18 Mongols, and 141 Chinese were present. Although a single chamber the Senate contained the elements of two houses, the representatives of the privileged classes, who would form an Upper House, and the representatives of the people, forming the basis of a Lower Chamber. The subjects for discussion were announced as national income and expenditure and the preparation of a budget, methods of taxation and public debts, new codes—which must be approved by the Emperor before being submitted to the Senate, and such other questions as might be presented by the throne. The powers of the Senate were limited. When it had agreed upon a resolution the Presidents, with the approval of the Grand Council or one of the Ministers of State, must memorialize the Emperor, who, if he approved, would issue an edict. If the Senate and the Grand Council or Ministry disagreed the matter must be again considered by the Senate, and if no agreement could be reached both sides must be presented to the Emperor.

As in the case of the provincial assemblies, the Senate soon showed its mettle. The first question under consideration involved the conduct of the Governor of Kwangsi and the Senate did not hesitate to pass a vote of censure. The consideration of official measures was soon interrupted by the presentation of a petition praying that the Senate memorialize for the speedy opening of a national assembly. This was unanimously agreed to on the 22nd amidst much enthusiasm. Even the official members voted for the measure, and from the provinces came petition after petition pointing out that the serious state of foreign affairs and the unsettled financial conditions made a national assembly imperative. After a Council of State on the 30th, the throne yielded in part, and an imperial rescript on November 4 announced that the parliament would be summoned

in 1913, four years sooner than the original plan. Although this announcement was received with unusual enthusiasm, it is of interest to note that in certain quarters it was considered an unreasonable postponement of a vital measure. Mukden and Tientsin were the centers of the continued agitation.

The throne had, apparently, shown weakness in the presence of this embryonic parliament, and the Senators proceeded to take advantage of it. On October 26 the budget had been presented showing a deficit of about 74,000,000 taels. A committee of the Senate reduced this to 14,000,000 taels. Next the Senate vetoed the Hunan loan, on the ground that the consent of the local assembly had not been obtained. A decree informed it that this loan was not within its purview, but also stated that in the future the formalities would be complied with. Then the Senate demanded that the Grand Councilors appear in person to explain this objectionable loan. They refused, and for a time a deadlock threatened, and later, when two measures passed by the Senate were thought to be pigeon-holed by the Grand Council, a unanimous vote of want of confidence was passed. This was withdrawn when the bills in question were finally approved, and instead a memorial was presented praying for a responsible Cabinet. Prince Ching, President of the Grand Council, was the especial object of the Senate's distrust, but he was strongly supported by the Regent, and the memorial for a Cabinet was rejected. Another impeachment, designed mainly against Prince Ching, was carried but was in turn withdrawn after an edict eulogizing the veteran statesman appeared.

These were the more important measures before the Senate, although considerable interest was taken in the queue-cutting resolution which was carried, but rejected by the Regent. Finally, on January 11, 1911, the first session of the Senate was brought to a close. It had lasted for three months and ten days, in which thirty-nine meetings for the transaction of business were held. On the other days the various committees sat. Seventeen bills were left undecided, and the revised Budget was subject to the approval of the Grand Council prior to submission to the throne.

On the whole, the first session of this provisional parliament may be considered a success. It was intended to serve as a training school for members of the national assembly, and it fulfilled this purpose excellently. It proved a useful agency for the expression of popular opinion, and in this way proved a safety-valve, as it were, for the overheated politics of the provinces. Its deliberations were animated by a spirit of genuine patriotism, and it tended to strengthen the national feeling which has been growing so rapidly in China. Criticized because of the presence of a majority of official appointees, it showed fearlessness in the presence of high officials, even attempting to impeach the Grand Council. And although it accomplished less than its members hoped, yet it secured a shortening of the period of preparation for a constitution—a measure of doubtful value from the western point of view, and it gave force to the movement for a responsible Cabinet.

For several months the organization of the Cabinet was under discussion in Peking and on May 9th, the New Cabinet was announced. Prince Ching was appointed Prime Minister, with two Vice Prime Ministers. Ten portfolios were created. Of the thirteen members five were princes, four were Manchus and four Chinese. The Cabinet is responsible to the throne. On some measures it acts as a whole, and the Prime Minister can suspend the orders of individual ministers if he thinks necessary, while considerable independence is vested in the Ministers of the Army and Navy. At the same time a Privy Council consisting of thirty-four members was created.

The last few months have seen the formation of definite political parties, and the continued activity of the provincial assemblies and of their representatives in Peking. The Senate will convene in October in regular session, a request for a special session having been denied by the Regent.

Such have been the steps in the process of constitution-making in China in the past five years, and only a little over a year remains. Certain of these events weaken the force of many of the generally-believed opinions of the Chinese. They have been pronounced conservative, yet

many believe they have moved with dangerous celerity toward popular government, for China has allowed seven years for what Japan considered twenty-two hardly sufficient. They have been called lacking in patriotism, yet the attitude assumed by the local assemblies toward the foreign loans, the annexation of Korea, and the Russo-Japanese convention, shows that in certain powerful circles a national spirit is developing. In any event the past five years have been full of change in China. A host of reform edicts have been promulgated and have been enforced with varying success, depending mainly upon the attitude of the local officials. Some of these reforms are of more fundamental importance than the introduction of parliamentary government—such as the reforms in education, currency, finance, laws and procedure—but no one of them has aroused an equal popular interest. Much remains to be done in the short time that remains. The basis of representation, the suffrage qualifications, the laws of the houses, present problems which will require careful consideration. But the developments of the past few years give reason to believe that the inherent good sense of the Chinese will enable them to meet their problems in a manner satisfactory to them even though not in accordance with western ideas. It is worth remembering that forty years ago it was the custom for many foreigners in Japan to deride her attempts to acquire the vital elements of western civilization. There is no good reason why similar criticisms at the expense of China may not prove quite as far from the point. During these critical years China will well repay the careful attention of all those who are interested in the movement of a people toward better things.